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REMARKS

By the above actions, claims 1, 4, 6, 9, 11, 16, and 19 has been amended and non-elected claims 26-34 have been canceled (in addition to previously cancelled non-elected claims 34-60) subject to applicants' right to file a divisional application relative thereto. In view of the actions taken and the following remarks, further consideration of this application is now requested.

In view of the Examiner's indication of allowable subject matter with respect to claims 4-6, these claims have been rewritten in independent form. Thus, formal allowance of these claims is in order; claims 7 & 8 have already been allowed.

Claims 3, 9, and 10 were rejected under the first paragraph of 35 USC § 112 with regard to the recitations of two axially spaced sealing members in the intermediate regions. However, it is pointed out that the Examiner appears to have overlooked that fact that claim 1 does not require all of the sealing members to be in the intermediate area, but rather states that are located "*at least* in an intermediate region of its axial length," meaning as long as one is in the intermediate area, others can be present which are not so located. Thus, claim 3 is submitted to properly read on the elected embodiment in which *at least* seal member 22 is located in the intermediate area sealing member 20 while seal 20 located axially spaced from it at one end of the cylindrical portion. As for claims 9 and 10, this rejection is inapplicable to amended claim 9 and claim 10 has been cancelled. In view of the foregoing, this rejection should now be withdrawn and such action is hereby requested.

Claims 9 and 19 were rejected under 35 USC § 112, second paragraph, as being indefinite. However, the Examiner's reason for this rejection appears to be inappropriate. For example, with regard the elected embodiment, it can be seen that a sealing member 20 is located at one end of the cylindrical portion, another sealing member 22 is located in the intermediate area and a sealing member is formed by the flange portion 14 at the other end of the intermediate portion. Thus, it is readily apparent how sealing members are in the intermediate region as well as at the end of the cylindrical portion, and these claims have been amended to more expressly reflect these characteristics. Thus, this rejection should be withdrawn, and if it should be maintained, the Examiner is requested to explain more fully the basis of her confusion.

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Claims 1, 2, 5, and 11 have now been rejected under 35 USC § 103 as being unpatentable over the Leysieffer et al. patent when viewed in combination with the Gunnensen et al. patent.

Firstly, for the sake of brevity, the Examiner's attention is directed to all of the differences between the present invention and the fixation element of the present invention set forth in the remarks of applicants' preceding Amendment of this past May since they all still apply. Furthermore, it is pointed out that the membrane 13 of Leysieffer et al. is located at the end having the flexible flange 23, while the closed end portion of applicants' element is at end of the cylindrical portion that is opposite that having the flexible sealing member 20.

As for Gunnensen et al., unlike the fixation elements of the present invention and Leysieffer et al. which are designed for direct implantation and fixation in a wall of the auditory canal, Gunnensen et al. is directed to a removable ear wax guard that is mounted in a housing of a hearing aid. Thus, as is clearly apparent from Fig. 2 of Gunnensen et al., the bead 13 is designed to pass through an opening in the housing wall 5 and outwardly deform a plastic hose 4. Such a teaching has little applicability to an implantable structure that is to be inserted in a bore through a boney wall of the ear canal and is to hold against the bone in which it is inserted, bone not being deformable in the manner of a plastic hose. Thus, given the unrelated purpose of the Gunnensen et al. ear wax guard, the different structural environment in which it is installed and the different manner in which it secures itself, it is not seen how it would have been obvious to apply the bead of Gunnensen et al. to the fixation element of Leysieffer et al., especially since there is no apparent need, reason or motivation to do so, Leysieffer et al.'s fixation element being fully secured by a clamping action that needs on additional bead or other means to hold it in place.

For all of these reasons, it is submitted that claims 1, 2, 5, and 11 are not rendered obvious by the Leysieffer patent no matter how it might be viewed in conjunction with the Gunnensen et al. patent. Therefore, withdrawal of the outstanding rejection based on these two references is in order and is requested.

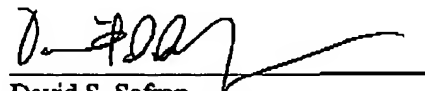
Claims 1, 2, 5, and 11 have now also been rejected under 35 USC § 103 as being unpatentable over the Maltan et al. patent application publication when viewed in combination with the Gunnensen et al. patent. Firstly, it is noted that the effective date of this reference is almost a full year after applicants' priority date and should this rejection be

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maintained, applicants intend to submit a verified translation of the priority document in order to remove Maltan et al. as a reference. However, such action should be unnecessary since this combination of references cannot teach the invention as now claimed. That is, both the ear wax guard of Gunnensen et al. and the tubular case 61 of Maltan et al. are open at both ends and there is no reason for either of them to be closed at one end as is not recited in claim 1 with respect to fixation element of the present application. Thus, this rejection should be withdrawn and such action is requested.

In view of the foregoing, allowance of this application in the absence of any new and more pertinent prior art being discovered is requested. However, while the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved, or should any new issues arise, which could be eliminated through discussions with applicant's representative, then the Examiner is invited to contact the undersigned by telephone in order that the further prosecution of this application can thereby be expedited. In this regard, the Examiner's attention is directed to the new address and telephone number of the undersigned set forth below and on the accompanying Change of Address notice.

Respectfully submitted,


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